

Court No. - 11

Case :- CRIMINAL REVISION No. - 772 of 2024

Revisionist :- Mo. Rafiq

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 2 Others

Counsel for Revisionist :- Mohammad Hamza Beg, Arvind, Suchindra Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin, J.

1. Heard Shri Mohammad Hamza Beg, learned counsel for the revisionist and Sri Abhay Singh, the learned A.G.A. for the State-respondents.

2. Instant revision under Section 397/401 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') now 438/442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed against the impugned order dated 05.04.2024 passed by the learned Additional Sessions Judge/ Special Judge (POCSO Act) in Sessions Trial No.9809 of 2014 in Re State of U.P. vs Noorul Hasan @ Mukti arising out of Case Crime No.169 of 2014 under Sections 307/34 and 504 IPC, Police Station Masauli, District Barabanki.

3. Contention of the learned counsel for the revisionist is that an incident took place on 27.08.2014 in which one Mohd Sajid was stabbed by Noorul Hasan and Mohd Gufran while Shri Mohd Imtiyaz and Shri Mohd Kaleem had pulled down the victim from the motorcycle on which he was riding.

4. Upon the victim being stabbed, he fell down and thereafter he gained consciousness only in the hospital.

5. An FIR dated 27.08.2014, a copy of which is Annexure-1 to the revision, had been lodged by the revisionist which indicates the names of Shri Nurul Hasan, Shri Mohd Gufran and two other unknown persons in the incident.

6. A copy of the medical report has been filed, a copy of which is Annexure-2 to the revision, to indicate the seriousness of the injuries

that had been caused to the victim/injured.

7. In the first statement that has been given by the victim/injured, which is said to have been given in the hospital, he named Shri Noorul Hasan and Shri Mohd Gufran of having assaulted and thereafter stabbed him and role of Shri Mohd Imtiyaz and Shri Mohd Kaleem as indicated above i.e. of having taken down the revisionist from the motorcycle on which he was riding. Copy of the said statement is Annexure-3 to the revision.

8. However, the victim/injured in the statement that he had given in the Court on 02.08.2017, a copy of which is Annexure-4 to the revision, improved his case in which he indicated that Shri Mohd Imtiyaz and Shri Mohd Kaleem abused him and also slapped him. However, in the cross examination, it has been indicated by the victim/injured that all three persons stood silently at the time of the incident.

9. Upon a pointed query being made to the learned counsel for the revisionist as to three persons who are said to have stood silently, learned counsel for the revisionist states that the 3 persons were Shri Mohd Imtiyaz, Shri Mohd Kaleem and Shri Gufran, who stood silently and did not make any effort to intervene in order to save the victim/injured.

10. Subsequent thereto as Shri Mohd Imtiyaz and Shri Mohd Kaleem were not named in the charge-sheet which has been filed by the police, an application under Section 319 Cr.P.C. was moved by the revisionist, a copy of which is Annexure-6 to the revision, praying for naming Shri Mohd Imtiyaz and Shri Mohd Kaleem as accused.

11. Learned court below vide order impugned dated 05.04.2024 after considering the averments made by the revisionist as well as by the informant and particularly being swayed by the statement as made in the cross examination by the victim/injured was of the view that both Shri Mohd Imtiyaz and Shri Mohd Kaleem cannot be named as accused and the application has been rejected by the order impugned

dated 05.04.2024.

12. Being aggrieved, the instant revision has been filed.

13. The argument of the learned counsel for the revisionist is that perusal of Section 319 of the Code would indicate the power of the Court to proceed against other persons appearing to be guilty of the offence inasmuch as the said section categorically provides that **where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.**

14. Placing reliance on Section 319 of the Code, the argument is that once from the evidence itself it was apparent that both Shri Mohd Imtiyaz and Shri Mohd Kaleem had a role to play in the entire episode in which the victim/injured had been stabbed inasmuch both had pulled down the victim/injured from the motorcycle on which he was riding, consequently it was in the fitness of thing that the learned court should have summoned both of them under Section 319 of the Code upon an application being moved by the revisionist and the application should not have been rejected in such a cursory manner.

15. In this regard reliance has been placed on the judgments of the Hon'ble Supreme Court in the cases of ***Hardeep Singh vs State of Punjab & Ors : 2014 (3) SCC 92***, ***Sukhpal Singh Khaira vs The State of Punjab :2023 (1) SCC 289*** and ***Sandeep Kumar vs The State of Haryana & Anr : 2023 LiveLaw (SC) 573***.

16. Placing reliance on the aforesaid judgments, the further argument of the learned counsel for the revisionist is that the Hon'ble Supreme Court has categorically laid down in all the aforesaid three judgments that the word 'evidence' as used under Section 319 of the Code leaves no room for doubt that the evidence as understood under Section 3 of the Indian Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance

with the Evidence Act which also includes the documents and material evidence in the Evidence Act and would also include the statement during examination in chief.

17. Likewise the Hon'ble Supreme Court in the case of ***Sukhpal Singh Khaira (supra)*** has also held that when in the course of trial it appears from the evidence that such person has a role in committing the offence, therefore, it would be open for the court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court.

18. Again in the case of ***Sandeep Kumar (supra)*** the Hon'ble Supreme court has held that merits of the evidence has to be appreciated only during the trial, by cross examination of the witnesses and scrutiny of the Court and this is not to be done at this stage under Section 319 of the Code.

19. Placing reliance on the aforesaid three judgments, the contention is that the learned court has patently erred in not appreciating the statements as had been given by the victim/injured and having rejected the application filed under Section 319 of the Code in a cursory manner.

20. On the other hand, learned A.G.A. has supported the order passed by the learned court below.

21. Heard learned counsel for the contesting parties and perused the record.

22. From perusal of the record, it emerges that an incident took place on 27.07.2014 on which date the victim-Mohd Sajid had been stabbed. The victim had fainted and only regained consciousness in the hospital. An FIR was lodged on the same date i.e. 27.07.2014 at 5 PM by the uncle of the victim/injured, the revisionist herein namely Shri Mohd Rafeeq in which Shri Noorun Hasan and Shri Mohd Gufran had been named and it had been indicated that there were two other unknown persons.

23. As per the medical report of the doctor, the injuries sustained by

the victim/injured were serious.

24. In the first statement that had been made by the victim/injured, which is said to have been made in the hospital, he had only named Shri Noorul Hasan and Shri Mohd Gufran in stabbing him while the role of Shri Mohd Imtiyaz and Shri Mohd Kaleem has been indicated as to have taken him down from the motorcycle on which he was riding. No other role has been assigned to both of them in the first statement given by the victim/injured.

25. The injured Mohd Sajid has improved his statement given on 02.08.2017 inasmuch as in this statement there is no allegation against Shri Mohd Imtiyaz and Shri Mohd Kaleem of having taken down the injured/victim from the motorcycle rather it has been indicated that they abused and stabbed him. However, in the cross examination, it has categorically been indicated that all three persons were standing silently.

26. Learned Court after examining the statements as had been given by the witnesses including the statement of victim/injured and after considering all relevant aspect of the matter has been of the view that no case is made out for summoning the two persons namely Mohd Imtiyaz and Mohd Kaleem under Section 319 of the Code and accordingly rejected the said application.

27. The Hon'ble Supreme Court in the case of **Hardeep Singh (supra)** has held as under:-

"81. The second question referred to herein is in relation to the word `evidence` as used under Section 319 Cr.P.C., which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh (Supra), it was held that "It is

true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not." In *Ranjit Singh (Supra)*, this Court held that "it is not necessary for the court to wait until the entire evidence is collected," for exercising the said power. **In Mohd. Shafi (Supra), it was held that the pre-requisite for exercise of power under Section 319 Cr.P.C. was the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even wait till the cross examination is over and that there would be no illegality in doing so.** A similar view has been taken by a two-Judge Bench in the case of *Harbhajan Singh & Anr. v. State of Punjab & Anr.* (2009) 13 SCC 608. This Court in *Hardeep Singh (Supra)* seems to have misread the judgment in *Mohd. Shafi (Supra)*, as it construed that the said judgment laid down that for the exercise of power under Section 319 Cr.P.C., the court has to necessarily wait till the witness is cross examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 Cr.P.C."

(Emphasized by Court)

28. From perusal of the aforesaid observations as have been made by the Hon'ble Supreme Court in ***Hardeep Singh (supra)***, it clearly emerges that the Hon'ble Supreme Court which considering the powers under Section 319 of the Code has held that the evidence as understood under Section 3 of the Evidence Act is statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act and such evidence begins with the statement of the prosecution witnesses and, therefore, would also

include statements including examination in chief. Further, the Hon'ble Court held that it would be discretion of the Court concerned to summon any persons who are found to be accused.

29. Likewise, the Hon'ble Supreme Court in the case of ***Sukhpal Singh Khaira (supra)*** has held as under:-

"20. A close perusal of Section 319 of CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation 'conclusion of trial' in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh (supra) since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court."

(Emphasized by Court)

30. From perusal of the judgment in the case of ***Sukhpal Singh Khaira (supra)***, it clearly emerges that the Hon'ble Supreme Court has held that it is open for the Court to summon such a person so that he would be tried together with the accused and such power is **exclusively of the Court**. The said observation also finds place in the recent judgment of the Supreme Court in the case *Sandeep Kumar (supra)*.

31. The Supreme Court in the case of ***Juhru & Ors vs Karim & Anr : Criminal Appeal No.549 of 2023***, decided on 21.02.2023 after considering its earlier judgments in the case of ***Hardeep Singh***

(*supra*) and *Sukhpal Singh Khaira (supra)* has held as under :-

"17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked."

(Emphasized by Court)

32. From perusal of the judgment of the Hon'ble Supreme Court in the case of *Juhru (supra)*, it also emerges that the Apex Court has categorically held that the powers of summoning under Section 319 of the Code is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused.

33. Keeping with the aforesaid observations of the Hon'ble Supreme Court in the case of *Juhru (supra)* as well the impugned order passed by the learned court below wherein the entire facts and circumstances as well as statements of the witnesses have been considered, this Court does not find any perversity with the impugned order.

34. Accordingly, the revision is **dismissed** at this stage.

Order Date :- 11.7.2024

prateek